

Editor's note: Reconsideration denied by order dated June 11, 1975

ELIZABETH A. SHARP

IBLA 75-87

Decided April 7, 1975

Appeal from Fairbanks Land Office decision dated June 11, 1974, rejecting appellant's application F-21122 for a small tract lease.

Reversed and remanded.

1. Alaska Native Claims Settlement Act -- Small Tract Lease: Generally --
Small Tract Lease: Application
Where a Public Land Order withdraws land from all forms of appropriation under the public land laws for proper classification of the lands under Alaska Native Claims Settlement Act and for protection of public interest values, but provides that the withdrawn lands are subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to grant leases, an application for Small Tract lease accompanied by a petition for classification may be accepted for filing by the Bureau of Land Management. Ultimate disposition of the application will be dependent upon the classification of the land involved.

APPEARANCES: Elizabeth A. Sharp, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On May 23, 1974, appellant filed a small tract application, F 21122 with the Fairbanks District Office, Bureau of Land Management. Accompanying the application was a Petition for Classification on which applicant stated: "The land has been surveyed (U.S.S. #3637, Lot 8) and is located in the settlement of Central, Alaska, and use of the land hereby requested would conform to that in the immediate area."

By letter decision dated June 11, 1974, the District Office informed appellant that the small tract application was unacceptable because the described land had not been classified or opened to applications under the Small Tract Act, 1/ and further, that the land was withdrawn by Public Land Order No. 5180, dated March 9, 1972, from all appropriation under the public land laws, pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. (Supp. III, 1973).

Applicant appealed on the basis that the land had previously been filed on by a Mr. Heine Carstens. Because of Mr. Carstens' inaction appellant contests his application and requests that her application be substituted. 2/ Appellant states, in the alternative, reasons why the land should be classified as small tract.

[1] We believe that the Fairbanks Office erroneously rejected appellant's small tract application. It is axiomatic that no land may be disposed of under the Small Tract Act of June 1, 1938, 52 Stat. 609, as amended, 43 U.S.C. §§ 682a-e (1970), unless and until it has been classified for disposal under the auspices of that Act. The operating procedures of the Bureau of Land Management, however, provide a mechanism known as the petition-application classification system, by which an interested citizen may make an application for a small tract lease, inter alia, on land not classified for small tract purposes, provided that the application is accompanied by a petition seeking classification of the land for such purposes. See 43 CFR 2731.1(c); 2731.3-1; 2450. As long as the application is regular on its face, the authorized officer does not adjudicate the merits of the application unless or until the land is classified in accordance with the applicant's petition. In the instant case, the application was held unsuitable for filing inasmuch as the land had not been classified for small tract disposal. No substantive consideration was given to appellant's classification petition. This, we believe, was error. Appellant's application should have been accepted subject to eventual disposition of her classification petition. If the land is found not suitable for small tract purposes appellant's application would be properly rejected at that time.

1/ In subsequent correspondence the District Office by letter of December 26, 1974, reiterated: "Our records do not show this tract of land ever being classified for small tract." The District Office decision further noted that the land had been withdrawn by Public Land Order No. 5180.

2/ The District Office by letter of December 26, 1974, stated that "On August 12, 1962, Henry C. Carstens filed an application for a Headquarters Site, F-033385 on Lot 8 of USS # 3637. On July 30, 1970, a decision was issued rejecting the application to purchase, and the case was closed on our records, September 18, 1970." (Emphasis added).

We note that the situation is somewhat complicated by the fact that PLO 5180 withdrew the lands from all forms of appropriation under the public land laws. But the reason for that withdrawal was "for study to determine the proper classification of the lands under section 17(d)(1) of [the] Alaska Native Claims Settlement Act, and to ascertain the public values in the land which need protection." 37 F.R. 5583 (March 16, 1972). In that the withdrawal resulting from PLO 5180 aggregated 47,100,000 acres of land, it is unlikely that all of the lands subject to the withdrawal will be classified simultaneously. Thus, we do not perceive that PLO 5180 bars consideration of the merits of appellant's petition for classification. We, of course, express no views as to the merits of the requested classification.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District Office is reversed and the case file is remanded for further action not inconsistent with this opinion.

Douglas H. Henriques
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING DISSENTING:

While PLO No. 5180 remains in effect I believe that the acceptance of a small tract petition-application for land covered by the order is a matter of policy rather than one of law or regulation, and absent any clear expression of such policy, I would affirm the decision below.

Edward W. Stuebing
Administrative Judge

